

### **REMARKS**

Presently, claims 2-5, 10-12 and 28-40 are pending in the application. A Request for Continued Examination ("RCE") under 37 C.F.R. §1.114 is being filed herewith. Claims 28 and 31 have been amended to more clearly recite the present invention. Support for the amendments to independent claims 28 and 31 may be found, for example, in Fig. 5 and at page 12, line 22 – page 13, line 11 and page 15, lines 22-30 of the specification. Accordingly, no new matter has been added by the foregoing amendments.

#### ***Prior Art Rejections – § 103(a)***

The Examiner has rejected claims 10, 12, 28-33, 38 and 40 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,177,931 to Alexander *et al.* ("Alexander") in view of U.S. Patent No. 6,002,393 to Hite *et al.* ("Hite"). The Examiner contends that Alexander teaches each and every element of the present invention, including reordering stored IPG ads in accordance with a displayed programming ad, but acknowledges that Alexander does not teach or suggest the memory structure of a queue. The Examiner further contends that Hite teaches this feature, and concludes that it would have been obvious to combine the teachings of Hite with Alexander to result in Applicant's claimed invention. Applicant respectfully traverses this rejection.

Alexander teaches improvements to electronic program guides ("EPGs"), including viewer interaction capabilities, opportunities for advertisers to reach viewers and the creation of viewer profiles. Alexander's system allows the viewer to interact with the EPG, including selecting programming (including advertisements) for viewing and/or recording. The user may also interact with the EPG by scrolling through the listings which are not displayed on the initial screen. The EPG in Alexander collects information about the viewer, either by obtaining the requested information directly from viewer input or learning the desired information by recording the viewer's "actions and circumstances surrounding those actions" with the EPG (see column 28, lines 30-59 of Alexander). The information that the EPG records includes instructions provided to the EPG (e.g., a channel change) as well as the time that that change was instructed and the

programming switched to and from as a result of the change. The EPG also records the absence of user interaction. Alexander teaches that a “viewer profile analysis program” performs an analysis of the collected data and, combined with the viewer’s profile information, develops “viewer characteristics”. Alexander then uses the viewer characteristics to customize the EPG, so that the viewer is presented with programming and/or advertisements that are likely to be of interest, both in terms of content and order of display. Alexander also teaches that the EPG may display advertisements based on specific programming that the viewer is watching immediately prior to entering the EPG (see column 26, line 61 – column 27, line 2 of Alexander). Alexander also discloses that certain advertisements may be assigned to particular “classes” of programming.

Hite teaches a system for delivering targeted commercials to consumers’ terminals. In Hite, customers, programs and commercials are categorized using known algorithms or data from an outside source. Each consumer’s local terminal is individually addressable, and is designated as being within one or more categories. Separately, each commercial is designated as being within a particular category. When commercials are broadcast, a consumer’s local terminal uses the information associated with the consumer and the commercial to determine whether to play or ignore a particular commercial. In Hite, the commercials may be combined with programming at a transmission facility, and then sent to the consumer. Alternatively, multiple commercials may be simultaneously broadcast over multiple channels, or transmitted and stored at the local terminals in advance. In Hite, an ad queue may be stored in memory, such that lists of ads may be stored for future insertion into programs. Hite also discloses the ability to synchronize targeted commercials with program switching. A viewer reaction feature causes additional relevant commercials to be presented in response to a viewers’ response to questions and/or other viewer interactions. Hite also teaches an anti-zapping feature to delay presentation of the next desired channel until the currently displayed advertisement is completed.

Independent claim 28, as amended, recites:

A method of enhancing the effectiveness of IPG ads and programming ads in a television network environment, the method comprising:

- (a) storing an IPG ad queue, the IPG ad queue containing an ordered list of IPG ads;
- (b) storing a programming ad queue, the programming ad queue containing an ordered list of programming ads to be inserted in a programming avail;
- (c) linking at least one IPG ad with at least one programming ad to form at least one IPG-programming ad combination;
- (d) displaying one or more IPG ads from the at least one IPG-programming ad combination in the IPG when the IPG is invoked immediately prior to or immediately subsequent to the display of a programming ad in the programming avail, wherein the IPG ads are displayed in accordance with the IPG ad queue; and
- (e) reordering the IPG ad queue in accordance with the displayed programming ad.

Initially, Applicant points out that the Examiner appears to be reading the term “programming ad” as recited in independent claim 28 to be any advertisement that relates to programming. As such, the Examiner contends that the panel ads in Alexander’s EPG are “programming ads”, and thus concludes that the combination of the panel ads and the virtual channel ad slots in Alexander are utilized and manipulated within Alexander’s EPG in a manner that teaches the noted elements of independent claim 28.

Although Applicant disagrees with the Examiner’s reading of Alexander, to further prosecution of the present application, independent claim 28 has been amended to clarify that the “programming ads” in Applicant’s invention are ads that are to be inserted or displayed “in a programming avail.” Thus, Applicant respectfully submits that the ads in Alexander that the Examiner relies on for the teaching of “programming ads”, are not inserted or displayed in a programming avail, but rather are displayed within the EPG itself and are not related in any manner to a programming avail.

Furthermore, Alexander does not disclose a system or method that incorporates an IPG ad queue that is reordered “in accordance with the displayed programming ad,” as recited in independent claim 28. Alexander discloses that an ad may be assigned a priority within a rotation of ads, such that the highest priority ad is displayed each time the same section of the EPG is displayed or entered (see column 26, lines 45-56 of

Alexander). Thus, in Alexander, such a prioritized list is not associated with the entire IPG, but rather is associated with only a specific page or section of the EPG. As such, Alexander's prioritized list cannot be considered an "IPG ad queue" as in the present invention. Moreover, Alexander does not disclose that any list of ads (prioritized or not) stored in the EPG is reordered based on the displayed programming ad. In Alexander, the ad that is displayed in the EPG is based on the advertisement that the viewer was watching just prior to entering the EPG. The EPG ad corresponds to the television ad. However, Alexander does not disclose that the EPG performs any other function with respect to the ads in the EPG or the order thereof. The fact that Alexander teaches that "ads can be assigned a priority..." and be displayed in successive rotation according to that priority, does not mean that Alexander discloses an IPG ad queue that is reordered in accordance with the displayed programming ad. Rather, the ads in Alexander are not reordered – in fact, they are kept in the same order – but are simply rotated within that order. Furthermore, the ads are rotated only as a result of a viewer previously visiting that particular section or page of the EPG – not based on the programming ad, as recited in claim 28. Thus, Alexander does not disclose every step recited in independent claim 28. Accordingly, independent claim 28 is believed to be allowable over Alexander.

The Examiner relies on Hite simply for the teaching of a queue. However, Hite does not teach or suggest the other elements recited in independent claim 28. In particular, although Hite may teach a queue in the form of a list of ads, Hite does not teach that such a queue is reordered, and certainly does not teach or suggest a queue that is reordered in accordance with a displayed programming ad. Accordingly, Hite does not teach or suggest all of the features of independent claim 28.

Not only do Alexander and Hite not individually teach or suggest the features of independent claim 28, but the combination of these references as contended by the Examiner also does not teach or suggest Applicant's invention. Specifically, the combination of Alexander and Hite lacks at least the teaching of an IPG ad queue that is reordered "in accordance with a displayed programming ad," where the programming ad is to be inserted or displayed "in a programming avail." Accordingly, independent claim 28 is believed to be allowable over the combination of Alexander and Hite.

Similarly, independent claim 31 recites, “storing an IPG ad queue; storing a programming ad queue; ...and reordering the IPG ad queue in accordance with a reordering of the programming ad queue.” Additionally, independent claim 31 has been amended to recite that a programming ad is to be inserted or displayed “in a programming avail.” For the same reasons discussed above with respect to independent claim 28, neither Alexander nor Hite disclose all of the steps recited in independent claim 31, in that Alexander and Hite do not disclose reordering a programming ad queue nor reordering IPG ads based on reordering such a programming ad queue. Accordingly, independent claim 31 is believed to be allowable over Alexander and Hite, taken alone or in combination.

Dependent claims 10, 12, 29-30, 32-33, 38 and 40 are allowable at least by their dependency on independent claims 28 and 31, respectively. Reconsideration and withdrawal of the Examiner’s § 103(a) rejection of claims 10, 12, 28-33, 38 and 40 are respectfully requested.

The Examiner has rejected claims 2-3, 5, 34-35 and 37 as being unpatentable over Alexander in view of Hite and further in view of U.S. Patent No. 6,738,978 to Hendricks et al. (“Hendricks”). For the same reasons discussed above with respect to the Examiner’s obviousness rejection over Alexander and Hite, independent claims 28 and 31 are believed to be allowable over the combination of Alexander and Hite. Applicant respectfully submits that Hendricks does not teach or suggest any of the elements missing from this combination. Thus, independent claims 28 and 31 are believed to be allowable over the combination of Alexander, Hite and Hendricks. Dependent claims 2-3, 5, 34-35 and 37 are allowable at least by their dependency on independent claims 28 and 31, respectively. Reconsideration and withdrawal of the Examiner’s rejection of claims 2-3, 5, 34-35 and 37 are respectfully requested.

The Examiner has rejected claims 4 and 36 as being unpatentable over Alexander, Hite and Hendricks and further in view of U. S Patent No. 5,283,639 to Esch (“Esch”). As discussed above, independent claims 28 and 31 are believed to be allowable over the combination of Alexander, Hite and Hendricks. Applicant respectfully submits that Esch does not teach or suggest any of the elements missing from this combination. Thus, independent claims 28 and 31 are believed to be allowable over the combination of

Alexander, Hite, Hendricks and Esch. Dependent claims 4 and 36 are allowable at least by their dependency on independent claims 28 and 31, respectively. Reconsideration and withdrawal of the Examiner's rejection of claims 4 and 36 are respectfully requested.

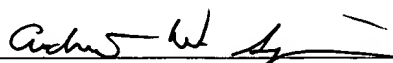
The Examiner has rejected claims 11 and 39 as being unpatentable over Alexander and Hite and further in view of U.S. Patent No. 6,799,326 to Boylan III et al. ("Boylan"). As discussed above, independent claims 28 and 31 are believed to be allowable over the combination of Alexander and Hite. Applicant respectfully submits that Boylan does not teach or suggest any of the elements missing from this combination. Thus, independent claims 28 and 31 are believed to be allowable over the combination of Alexander, Hite and Boylan. Claims 11 and 39 is allowable at least by their dependency on independent claims 28 and 31, respectively. Reconsideration and withdrawal of the Examiner's rejection of claims 11 and 39 are respectfully requested.

### *Conclusion*

In view of the foregoing amendments and remarks, Applicants respectfully submit that the Examiner's rejections have been overcome, and that the application, including claims 2-5, 10-12 and 28-40, is in condition for allowance. Reconsideration and withdrawal of the Examiner's rejections and an early Notice of Allowance are respectfully requested.

Respectfully submitted,

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